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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 19th August, 2026***# **CNR No. DLHC010386332026**+ **RSA 151/2026, CM APPL. 55650/2026****KAUSHALAYA DEVI**

W/o Sh. Ishwar Chand Yadav

R/o House No. 17, Street 1A/7,

Wazirabad Village, New Delhi-110084.

.....Appellant

Through: Ms. Anusuya Salwan, Ms. Nikita
Salwan and Mr. Bankim Garg,
Advocates.

versus

TSEHANG SUNGHEY TGANG

S/o Late Sh. Tashi

R/o House No.27, New Tibetan Camp,

Majnu Ka Tila, Delhi-110054

.....Respondent

Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CM APPL. 55649/2026 (Exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

RSA 151/2026

3. This **Second Regular Appeal** under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed by the Appellant, against the Judgment and decree dated 11.05.2026 whereby the learned District Judge, Delhi, in the Regular First Appeal has affirmed the



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Judgment dated 21.09.2023 whereby the **Suit number CS SCJ No. 95849/2016 of the Plaintiff/Appellant, for Permanent and Mandatory Injunction, has been dismissed.**

4. The **facts in brief**, as stated in the *Plaint*, are that Smt. Kaushalaya Devi, the plaintiff, had acquired ownership in respect of the plot measuring 100 sq. yards out of Khasra No. 100 situated at Gali No. 12, Village, Wazirabad, Delhi, on the basis of registered GPA dated 11.05.2004, in addition to Agreement to Sell, Receipt, etc. She thereafter, started to raise construction over the suit plot for the purpose of her residence. However, she was prevented from raising the construction by the Defendant No. 1, in connivance with the Police.

5. The plaintiff thereafter filed **Civil Suit No. 147/2005** before the learned Civil Judge. However, it was dismissed as not maintainable and was granted liberty to file a fresh Suit after complying with the provisions on the same cause of action. *The Plaintiff filed an Appeal against the said Order*, which is pending adjudication before the learned Civil Judge, Delhi.

6. The Plaintiff asserted that she having acquired ownership by virtue of sale documents; had an absolute right to raise construction over the Suit plot but has been prevented by the Defendant No. 1 along with the Defendant No. 2.

7. She thus, filed a *Suit for Permanent Injunction for restraining the Defendants from forcibly dispossessing her from the suit property and also to restrain the Defendants from obstructing her in carrying out the construction on the suit plot.*

8. The Suit was contested by the Defendant No. 1, Mr. Tsehang Sunghey Tgong, who asserted that the Plaintiff is neither the owner nor in possession



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of the suit property. In fact, it is the Defendant No. 1 who was in possession, and therefore, the Suit was not maintainable.

9. It was claimed that the Plaintiff was trying to play a fraud with the Defendants, with an oblique motive. She has not only twisted the true and real facts, but also committed fraud by making a false statement. *The Suit is barred by Order 2 Rule 2 CPC and Section 41(h) of the Specific Relief Act.*

10. Moreover, the Plaintiff has no *locus standi* to file the Suit. She has not approached *the Court with clean hands*. A ***similar Suit bearing No.147/2005*** had been filed, but the same has been stated to be dismissed, without giving any date. No Appeal number or the date of hearing before the Appellate Court, has been mentioned.

11. It was further stated that the land of the Defendant No. 1 comprises of a total area of 620 square yards, out of which the constructed portion is 410 square yards. The remaining 210 sq. yards has been left open with a foundation on the backside of the house. The Defendant also has his own electricity connection in the suit property.

12. The Defendants stated that he has been in possession of this entire land as an owner and Plaintiff is not in possession. She has an evil eye on the Property and intends to take possession by filing a false and fabricated Suit.

13. In the earlier *Suit No. 147/2005 for Injunction filed on 13.05.2005*, the three Defendants, namely SHO, Police Station Timarpur, Delhi, SI Rajesh Sharma and HC Isham Singh, filed their *Written Statements that the Plaintiff was not in possession of the suit land and that the same was owned by the Defendant No. 1.*

14. The Application under Order 39 Rules 1 and 2 CPC for grant of



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Interim Injunction, was dismissed and No Appeal had been preferred against the dismissal of the said Application.

15. The learned Civil Judge dismissed the Suit against which, an Appeal bearing No. 189/05 was filed, which is pending adjudication.

16. A preliminary issue was thereafter, framed in respect of the maintainability of the Suit. Since the Appellant, Smt. Kaushyala Devi, had not made the Defendant No. 1 as a party, he was left with no option, but to move an Application under Order 1 Rule 10 CPC, to be impleaded as a party in that first Suit, which is still pending consideration. However, no interim stay or protection has been given in the said Suit.

17. The Defendant not only denied the ownership of the Plaintiff, but also that she was not in possession of the suit property and sought the dismissal of the Suit.

18. The Defendant No. 2 in his **Written Statement**, gave the details of the earlier Suit and asserted that the present Suit was barred under Order 2 Rule 2 CPC read with Section 41(h) of the Specific Relief Act. It was asserted that the Plaintiff had not approached the Court, with clean hands and the Plaintiff is not disclosed any cause of action.

19. It was also stated that FIR No. 435/02 under Sections 424/68/471 has been registered, on the Complaint of the Defendant No.1. The Plaintiff was claimed to have no *locus standi* to file the present Suit.

20. **Issues** in the pleadings, which are as under:-

- i. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? *OPP*
- ii. Whether the plaintiff is entitled to a decree of mandatory injunction as prayed for? *OPP*



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- iii. *Whether the suit of the plaintiff is not maintainable in its present form? OPD.*
 - iv. *Whether the plaintiff has not approached the court with clean hands and has concealed the material facts? OPD*
 - v. *Whether the suit of the plaintiff is hit by provision of Order 2 Rule 2 CPC and Section 41 clause (h) of Specific Relief Act? OPD*
 - vi. *Whether the suit of the plaintiff is bad on account of misjoinder/non-joinder of necessary parties? OPD*
 - vii. *Relief.*
21. The **Plaintiff examined herself as PW-1** and tendered her evidence as Ex.PW-1/A. PW-2, Sh. Ishwar Chand Yadav supported the case of the Plaintiff.
22. **The Defendants examined DW-1, Mr. Vijay Kumar**, Assistant Accountant, TPDDL, District, Salimar Bagh, Legal.
23. **DW-2, Mr. Ashok Kumar**, UDC, Sub Registrar Office-I, Kashmere Gate, proved the registered Will dated 13.10.1992, Ex.DW-2/1, executed by Smt. Sushila Sharma in favour of Sh. Kewal Singh. She also proved GPA Ex.DW-2/2 dated 15.04.1997, executed by Sh. Kewal Singh in favour of the Defendant No. 1, in respect of Plot No. 5 admeasuring 100 sq. yards. Also, the Will dated 15.04.1997 executed by Mr. Kewal Singh in favour of the Defendant No.1, is exhibited as Ex.DW-2/3.
24. **DW-3, Smt. Indira Rani produced GPA**, Ex.DW-2/2 and the Site Plan, Ex.DW-3/P1.
25. **DW-4, Sh. Tsewang Sunghey Tsang, Defendant No. 1**, tendered his evidence by way of Affidavit, Ex.DW-4/A and proved the Agreement to



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Sell, Affidavit, Receipt and the Order on Application under Order 39 Rules 1 and 2 CPC, as well as the Order in the main Suit as Ex.DW-4/1 to Ex.DW-4/5.

26. The **learned Civil Judge** considered the documents of ownership placed on record by the Plaintiff and *held that no chain of documents in favour of the Plaintiff was established*. Mr. Aman Kumar or Mr. Sukhvir Singh, from whom the Property was allegedly purchased by the Plaintiff, were not examined.

27. Moreover, she relied on an electricity bill dated 31.03.2006 to prove her possession, but this electricity bill, did not reflect that the Plaintiff was a resident of Gali no. 12, Wazirabad, New Delhi, since no Plot number was also mentioned. Further, it was admitted that the suit property was a vacant piece of land. *It was thus, held that the Plaintiff had not been able to prove her ownership or possession in respect of the suit premises.*

28. In the light of observations in Anathula Sudhakar V. P. Buchi Reddy (Dead), 2008 (SC) 2033, *it was held that where the Property is a vacant site, which is not physically possessed by the Plaintiff, then in such cases, the principle is that possession follows the title*. If two people are claiming possession of a vacant site, one who is able to establish the title, would be considered in possession as against the person who is not able to establish the title. ***It was held that the Plaintiff was not able to establish her ownership in the plot of land and was thus, not entitled to the relief of Permanent and Mandatory Injunction as sought by her. The Suit of the Plaintiff was consequently dismissed.***

29. Thereafter, **RCA DJ/134/2023** was filed by the Plaintiff against the impugned dismissal of the Suit. However, the learned District Judge



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concurred with the findings of the learned Civil Judge. It was observed that no retrial merely on oral averments made in Application under **Order 41 Rule 27 CPC, could be allowed.** Mere assertion that the Plaintiff on account of suffering from liver and kidney diseases and being illiterate, was unable to pursue the case properly, was found to be vague.

30. It was further noted that the name of the erstwhile counsel or the documents of the erstwhile counsel about him suffering from the maladies, had not been proved. **Hence, it was held that the Application under Order 41 Rule 27 CPC, had no merits.**

31. The learned District Judge also referred to the statement of the Plaintiff before the learned Trial Court, to the effect that “*I am not exhibiting any documents.*” When the claim of the Plaintiff was based on title, she was under a duty to produce her title documents, ***in the absence of which, the Suit had been rightly dismissed by the learned Civil Judge.***

32. ***Aggrieved by the dismissal of the First Regular Appeal, the Second Regular Appeal has been filed.***

33. *The dismissal of the Application under Order 41 Rule 27 CPC, has been challenged by the First Appellate Court on the ground that the Appellant being illiterate, was not aware that the original chain of documents had been filed in another Suit.*

34. The Appellant had specifically pleaded that the erstwhile counsel appearing on her behalf before the learned Trial Court, was seriously ill and suffering from kidney and liver ailments and had died during the pendency of the proceedings. Owing to these factors, the Suit could not be prosecuted properly, and the original documents could not be brought on record.

35. *It is, therefore, submitted that the Application under Order 41 Rule 27*



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CPC has been dismissed along with the Appeal on 11.05.2026, which is contrary to settled principles of law.

36. The **substantial questions of law** proposed are as under:-

- A. Whether the courts below erred in law in dismissing the suit for injunction solely on grounds relating to exhibition of documents despite the documents being part of the judicial record and their execution not being specifically denied?*
- B. Whether the Ld. First Appellate Court failed to exercise jurisdiction vested in it under Order XLI Rule 27 CPC by refusing to permit additional evidence despite the Appellant demonstrating sufficient cause and due diligence?*
- C. Whether the Ld. First Appellate Court misapplied the principles governing Order XLI Rule 27 CPC by ignoring that the additional documents sought to be produced were already pleaded and formed part of the original record?*
- D. Whether the courts below failed to appreciate that procedural law is intended to advance justice and not defeat substantive rights?*
- E. Whether the courts below erred in law in ignoring the settled principle that a litigant ought not to suffer due to lapses or defaults attributable to counsel?*
- F. Whether the findings of the courts below are perverse inasmuch as they ignore material evidence already available on record including electricity bills and chain documents pertaining to the suit property?*

37. The **grounds of Appeal** are that the assertion of the Appellant that she had the chain of title documents since inception of the Suit and the



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copies had been placed on record, has not been considered. The electricity bill has been rejected merely because the plot number was not mentioned, but it has not been appreciated that in unauthorised colonies and Village abadi areas, electricity connection and municipal record often identify premises by locality, Gali No. and khasra Number, rather than the formal Plot numbers.

38. Moreover, the originals of the title documents were lying in connected judicial proceedings and thus, could not be produced in evidence before the learned Trial Court. The Court had ample power under Order XLI Rule 27 CPC, to permit the additional evidence in order to advance the cause of substantial justice and not to defeat the legitimate rights on technical grounds.

39. The additional evidence sought to be led by the Appellant, was neither an afterthought nor an attempt to fill the lacunae, but was based on the documents, copy of which had been filed along with the Suit. Moreover, the GPA and Will were registered documents and were thus, public documents emanating from official records maintained by the Office of Sub-Registrar. These documents were material for adjudication of the controversy. It is claimed that these documents should have been allowed to be brought on record under Order XLI Rule 27 CPC, for complete adjudication of the dispute in hand.

40. *It is, therefore, submitted that the impugned Judgment be set-aside and the Suit be remanded back for trial.*

Submissions heard and the record perused.

41. The entire basis for challenging the Order of the learned Civil Judge,



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which has been upheld in the Regular First Appeal by the learned District Judge *vide* Judgment dated 11.05.2026 is that the Plaintiff being assisted by a counsel, who was seriously unwell, could not produce the originals of the Agreement to Sell etc., by virtue of which, she had acquired ownership in the suit property.

42. It was claimed that those documents in original had been filed in another Suit, which could not be summoned and proved in the present Suit. It is pertinent to note that the learned Trial Court in addition to observing that the documents had not been proved in original, had also referred to the testimony of the Plaintiff, who had categorically stated that she did not want to exhibit the documents.

43. Additionally, it has also been noted that aside from the GPA etc., executed in her favour by Mr. Aman Kumar, she had not produced the entire chain of documents from whom Mr. Aman Kumar had purchased the suit property.

44. Once the complete chain of documents had not been produced by the Plaintiff, then mere documents of sale executed by Sh. Aman Kumar in his favour, would not have led to any favourable order in favour of the Plaintiff.

45. Though, the Appellant had filed an Application under Order XLI Rule 27 CPC, but has rightly observed by the learned District Judge, that mere oral evidence in respect of the documents, without the documents being actually placed on record, would not have served any purpose in proving the case of the Plaintiff.

46. It is also pertinent to observe that essentially, the *Suit was filed for Permanent and Mandatory Injunction*, which had been declined on account



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of non-production of documents, to establish her proprietary rights. The Suit of the Plaintiff was not for determination of her proprietary rights in the suit property.

47. There is no substantial question of law raised in the present Appeal. There is no merit and the Appeal is hereby, dismissed and disposed of accordingly.

48. The pending Application(s) are also **disposed of.**

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 19, 2026/RS